UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA	)	Criminal No.: H-97-93
	)	
v.	)	Violations:
	)	
MARK ALBERT MALOOF,	)	15 U.S.C. §1
	)	18 U.S.C. § 371
Defendant.	)	filed 8/25/97

UNITED STATES' RESPONSE TO DEFENDANT'S MOTION FOR PRODUCTION OF ADDITIONAL TRANSACTIONAL DATA

The United States, through the undersigned attorney, hereby responds to the Defendant's Motion for Production of Additional Transactional Data.

In his Motion, the Defendant requests the Court to order the government to produce pursuant to Fed.R.Crim.P. 16(a)(1)(C) "all transactional data produced to the grand jury by sellers of metal building insulation ("MBI") who sold MBI in . . . Missouri, Ohio, Georgia, and Florida." Motion at 1. The government submits that the Defendant's Motion should be denied because it seeks evidence that is not relevant to the charged conspiracy.

"Relevant evidence" is defined as evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed.R.Evid. 401 (emphasis added).

In this case, the Defendant has been charged with engaging in a conspiracy to fix prices of metal building insulation sold by the Defendant and co-conspirators from their facilities in Texas. Thus, the area that is relevant to the charged conspiracy is the area where Bay Insulation's Houston branch transacted and competed for business. The transactional pricing data for this relevant area has already been produced to the Defendant. Pricing information for sales of metal building insulation laminators in Missouri, Ohio, Georgia, and Florida is outside the scope of the revelant area and is thus irrelevant to the charged conspiracy. There is no logical connection between the prices of metal building insulation sold in other parts of the country and the prices of metal building insulation in the charged conspiracy area. Moreover, the introduction of evidence of metal building insulation prices from areas of the country that are not part of the charged conspiracy area would confuse the issues and mislead the jury. See Fed.R.Evid. 403.

In conclusion, the Defendant requests material that is outside the scope of the charged conspiracy area and is therefore irrevelant to the conspiracy charged. Therefore, the Defendant's Motion should be denied.

Respectfully submitted,

/s/

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UNITED STATES OF AMERICA	)	
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MARK ALBERT MALOOF,	)	
	)	
Defendant.	)	

ORDER

Upon consideration of the Defendant's Motion for Production of Additional Transactional Data and the response of the United States,

the Defendant's Motion is hereby DENIED.

DONE AND ENTERED THIS ____ day of _____, 1997.

_____

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the United States' Response to Defendant's Motion for Production of Additional Transactional Data was sent via Federal Express this _____ day of August, 1997, to:

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